

Message Text

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TO USMISSION EC BRUSSELS PRIORITY

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FOLLOWING MESSAGE SENT ACTION SECSTATE INFO CANBERRA PORT AU
PRINCE MANILA FROM GENEVA DTD 13 NOV 1975

QTELIMITED OFFICIAL USE GENEVA 8562

PORT AU PRINCE PASS MIKE SMITH AND TEXTILE DEL

E.O. 11652: NA

TAGS: GATT ETRD RP AS

SUBJ: TEXTILES-AUSTRALIA/PHILIPPINE DISPUTE

REF: STATE 265023

1. AS MIGHT HAVE BEEN EXPECTED, TSG DIRECT HEARING AND QUESTIONING
AUSTRALIAN AND PHILIPPINE REPS (NOV 10-11), REVEALED
SEVERAL NEW ELEMENTS IN DISPUTE WHICH LEAD US REP TO CONCLU-
SION THAT BOTH SIDES HAVE PAID CONSIDERABLY MORE ATTENTION TO
THEIR "RIGHTS" UNDER MFA THAN THEY HAVE TO THEIR OBLIGATIONS
THEREUNDER.

2. AFTER ALL EVIDENCE IS IN, AUSTRALIAN JUSTIFICATION FOR
ART 3 ACTION, WHICH WOULD HAVE TO BE FOUND IN ""CUMULATIVE"
CONCEPT DISRUPTION IF IT COULD BE FOUND AT ALL, WAS CERTAINLY
QUESTIONABLE AT TIME TAKEN EVEN ON "CUMULATIVE" BASIS. HOW-
EVER, BY TIME AUSTRALIANS DECIDED TAKE ACTION (AUG 28),

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IMPORTS FROM PHILIPPINES AND OTHER SOURCES HAD REACHED

LEVELS WHERE THEY COULD BE FAIRLY CONSTRUED AS POSING "ACTUAL THREAT" OF SERIOUS DAMAGE, THUS CLEARLY MEETING ANNEX A CRITERIA.

3. IT EVIDENT THAT PERIOD BETWEEN REQUEST FOR CONSULTATIONS AND GOA DECISION TAKE UNILATERAL ACTION WAS UTILIZED TO MAXIMUM BY PHILIPPINE EXPORTERS AND AUSTRALIAN IMPORTERS TO BUILD UP BASE AND/OR TRY GET GOODS IN BEFORE RESTRICTIONS BECAME EFFECTIVE.

4. CONCLUSION MAY ALSO BE DRAWN THAT GOP POSITION IN MAY CONSULTATIONS/NEGOTIATIONS MAY HAVE BEEN BASED ON MISTAKEN BELIEF THAT APPLICATION "CUMULATIVE MARKET DISRUPTION CONCEPT" WAS NOT PERMISSIBLE UNDER MFA. GOA DEL, IN FACT, TOLD GOP DEL THAT PHILIPPINE EXPOERTS WERE NOT DISRUPTIVE PER SE BUT WERE ADDITION TO DISRUPTION CAUSED BY IMPORTS FROM MANY SOURCES. GOP DEL'S ONLY RESPONSE TO TWO GOA OFFERS OF LIMITS SUBSTANTIALLY IN EXCESS OF ROLL-BACK PERIOD LEVELS, WAS TO IN-SIST ON LEVEL EQUAL TO 10 PERCENT OF AUSTRALIAN TOTAL IMPORTS PRODUCTS IN QUESTION. IN OCT SECOND ROUND NEGOTIATIONS (RECOMMENDED BY TSB), GOA, HAVING RESTRICTIONS IN PLACE AND HAVING MORE VALID EVIDENCE CUMULATIVE DISRUPTION IN THEIR MARKET, OPENED TALKS WITH OFFER LESS THAN LAST OFFER MADE IN MAY NEGOTIATIONS. THIS APPARENTLY CONVINCED GOP DELS THAT GOA WAS DEFYING TSB RECOMMENDATIONS AND, IN EFFECT, NOT NEGOTIATING IN GOOD FAITH. GOP BROKE OFF TALKS AND RETURNED TO TSB.

5. IN DEBATING EVIDENCE PRESENTED THIS SESSIO, EXPORT-ING COUNTRY REPS LED BY DORWARD (HONG KONG) AND SUPPORTED BY MIZOGUCHIA (JAPAN) HAVE MAINTAINED: A) THAT TRADE DEVELOPMENTS IN PERIOD BETWEEN REQUEST FOR CONSULTATIONS AND DECISION TO IMPOSE RESTRAINTS WERE IRRELEVANT IN CON-SIDERATION JUSTIFICATION RESTRAINTS; B) THAT THERE WAS NO EVIDENCE PRESENTED WHICH INDICATED ANY SERIOUS DAMAGE BY IMPORTS FROM PHILIPPINES; C) THAT IN THEIR INTERPRETATION ANNEX A, IT INCUMBENT ON GOA SHOW THAT IMPORTS FROM PHILIPPINES PER SE WERE DPSRPUTING AND CAUSING SERIOUS DAMAGE; D) THAT "LOW LEVELS" OF LIMITED OFFICIAL USE

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IMPORTS FROM PHILIPPINES AT TIME GOA TOOK ACTION DID NOT EVEN POSE THREAT; AND E) THAT, FOR FOREGOING REASONS, TSB HAD NO CHOPCE BQT TO FIND GOA RESTRICTIONS UNJUSTIFIED.

6. US, EC AND CANADA REPS DID AND ARE CONTINUING TO REJECT AS TOTALLY UNACCEPTABLE ANY FINDING OR RECOMMENDATIONS WHICH WOULD IN ANY WAY PREJUDICE OR INVALIDATE THE CUMULATIVE CONCEPT. AT SAME TIME, US REP, EC AND

CANADA REPS ARE TRYING JOINTLY FIND A CONCLUSION WHICH: A) WILL PRESERVE CUMULATIVE CONCEPT; AND, B) WILL DETERHEITHER GOP OR GOA FROM RAISING EXPLOSIVE ISSUES CUMULATIVE CONCEPT AND RELATIONSHIP ARTICLES 3 AND 6 IN TC. EITHER OF THESE ISSUES WOULD OPEN PANDORA'S BOX IN TC WITH TOTALLY UNPREDICTABLE RESULTS.

7. US REP (AS HAVE EC AND CANADA REPS) HAS INFORMED TSB CHAIRMAN THAT US, EC AND CANADA REGARD THIS CONFLICT WITHIN TC AS SO SERIOUS THAT ANY FINDINGS OR RECOMMENDATIONS BASED ON TSB "CONSENSUS" WOULD HAVE TO BE CONSIDERED BY WASHINGTON, OTTAWA AND BRUSSELS. WE HAVE ALSO INFORMED OTHER COLLEAGUES OF THIS CONCERN, TALKS BETWEEN INDIVIDUAL MEMBERS AND BETWEEN IMPORTING COUNTRY AND EXPORT COUNTRY REPS ARE CONTINUING ON ROUND-THE-CLOCK BASIS.

8. US REP WILL REPORT TODAY'S DISCUSSIONS IN SEPTTEL FOLLOWING AND, HOPEFULLY, MAY HAVE SOME WORKABLE RECOMMENDATION SUBMIT FOR WASHINGTON CONSIDERATION. DALE UNQTE KISSENGER

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